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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

PHILIP J. MARTINET, Individually, On Behalf of All Others Similarly Situated, and on Behalf of the General Public, Plaintiff, v. SPHERION ATLANTIC ENTERPRISES LLC, a Delaware Limited Liability Company; and DOES 1 through 50, inclusive, Defendant.	Case No. 07 CV 2178 W (AJB) **JOINT MOTION REGARDING PARTIES' DISCOVERY PLAN** **DISCOVERY MATTER** Complaint Filed: September 25, 2007

TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that, pursuant to F.R.C.P. 26(f), counsel for Defendant Spherion Atlantic Enterprises LLC ("Spherion" or "Defendant") and counsel for Plaintiff Philip Martinet ("Martinet" or "Plaintiff"), met and conferred via telephone on February 29, 2008, in accordance with the February 7, 2008 Order of the Honorable Anthony J. Battaglia. Counsel discussed the nature and bases of their claims and defenses and the possibilities for a prompt settlement but were unable to resolve the case. Counsel further agreed to the following stipulation regarding the parties' discovery plan:

1. Required disclosures under F.R.C.P. 26(a)(1)A-D will be made, in accordance with Judge Battaglia's Order, by no later than March 14, 2008.

2. Pursuant to an agreement reached by the parties in Judge Battaglia's conference room at the ENE Conference on February 5, 2008, the parties stipulated to the commencement of discovery on certain pre-certification issues prior to the submission of the present discovery plan. Accordingly, Plaintiff's first set of written discovery, addressing only pre-certification issues, was propounded on February 8, 2008. The parties have met and conferred and agreed to extend the time Defendant has to respond to a significant portion of this discovery until April 2, 2008. The remainder is due on March 12, 2008.

3. There is a dispute between the parties as to the scope of pre-class certification discovery.

   Plaintiff maintains that Defendant's disclosure of the identification and contact information of all aggrieved employees under Plaintiff's Labor Code Private Attorney General Act (California Labor Code § 2699 *et. seq.*)

("PAGA") and putative class members under Plaintiff's other California Labor Code claims is allowed prior to certification of the class. Plaintiff further contends that aspects of class-certification discovery and merits discovery overlap. Accordingly, Plaintiff contends that the following issues are discoverable prior to the Court's ruling on Plaintiff's anticipated motion to certify Plaintiff's class claims: (a) identification of all employees during the putative class period; (b) the basis for penalties, including but not limited to, employee time records and employee wage records on a per-pay-period basis from December 19, 2006 to the present.

Defendant contends that Spherion is a unique business entity with numerous decentralized offices and franchises throughout the state and pre-class certification discovery seeking information relating to thousands of its state-wide employees at hundreds of different offices and franchises is unreasonably broad, unduly burdensome, and irrelevant to certification of a class common to the Plaintiff. This discovery also violates employee privacy. Defendant further contends that Plaintiff must first establish prima-facie class-certification requirements under F.R.C.P. 23 before seeking broad, voluminous, and costly state-wide discovery related to thousands of employees who share no commonality or typicality with the named Plaintiff.

Although the parties intend to continue to meet and confer in good faith regarding this discovery issue, it is anticipated that judicial intervention may be required to resolve this issue.

Plaintiff's counsel believes this dispute can be resolved quickly and informally at the March 21, 2008 Case Management Conference. Although Defense counsel is not opposed to an expedited or informal resolution process, Defendant would prefer to have this dispute heard pursuant to a motion and hearing because the dispute is complex, there are a number of legal and factual issues that need to be presented to the Court, and the expense and burden associated with complying with Plaintiff's state-wide discovery is enormous. Defendant anticipates moving for a protective order under Rule 26(c) because of the extreme burden posed by Plaintiff's discovery requests.

4. Counsel have agreed that the following specific discovery will be necessary to evaluate this case: (a) Defendant's deposition of Plaintiff and Plaintiff's percipient witnesses; (b) Plaintiff's deposition of the Defendant's Persons Most Knowledgeable with respect to the following issues: (i) Defendant's meal break policies with respect to its non-exempt California employees from September 2003 to the present; (ii) Defendant's rest period policies with respect to its non-exempt California employees from September 2003 to the present; (iii) Defendant's time-keeping policies with respect to its non-exempt California employees from September 2003 to the present; (iv) Defendant's overtime policies with respect to its non-exempt California employees from September 2003 to the present; (v) Defendant's reimbursement of employee expenditures policies with respect to its non-exempt California employees from September 2003 to the present; (vi) Defendant's payroll record keeping policies with respect to its non-exempt California employees from September 2003 to the present; (vii) Defendant's policies related to itemized wage statements with respect to its non-exempt California employees from September 2003 to the present; and (viii) Defendant's policies related to payment of all compensation upon employees' separation of employment with respect to its non-exempt California employees from September 2003 to the

present; and (c) Plaintiff's deposition of an agreed-upon limited number of Defendant's officers and managing agents regarding Defendant's corporate structure and its business relationships with its affiliated corporations, limited liability companies, and other business entities.

8. Defendant will make its employee and management witnesses available for deposition in their city of residence, without the need for subpoena.

9. Prior to Plaintiff's motion for class certification Defendant anticipates the following discovery: (a) written interrogatories to Plaintiff; (b) document requests to Plaintiff; (c) depositions of the Plaintiff; and (d) depositions of any percipient witnesses identified in discovery. Defendant will also seek to depose any witnesses who submits evidence or testimony in support of Plaintiff's motion for class certification.

10. Counsel fully reserve the right to conduct additional discovery that may be required, including but not limited to depositions not identified herein (subject to the limitations set by Federal Rules of Civil Procedure and local rules), and expert witness discovery.

11. Counsel presently foresee the need for changes in the limitations on discovery imposed under the Federal Rules of Civil Procedure. Specifically, Defendant anticipates that Plaintiff's deposition may take more than 7 hours. Similarly, Plaintiff anticipates that the depositions of Defendant's Person(s) Most Knowledgeable may take more than 7 hours. Counsel have agreed to enter into separate agreements, as necessary, to protect any information and/or documents protected by confidentiality or right to privacy.

This Joint Discovery Plan is being lodged with Judge Battaglia pursuant to the Court's February 7, 2008 Order.

DATED: March 10, 2008

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DATED: March 10, 2008

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DATED: March 10, 2008

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